

HOUSE SUBSTITUTE

FOR

HOUSE COMMITTEE SUBSTITUTE

FOR

HOUSE BILLS NOS. 404, 324, 403, 344, 426, & 541

AN ACT

2 To repeal sections 386.120 and 386.210, RSMo,
3 and to enact in lieu thereof fourteen new
4 sections relating to the regulation of
5 electric, gas, and water utilities, with
6 penalty provisions and an emergency clause.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF MISSOURI,
8 AS FOLLOWS:

9 Section A. Sections 386.120 and 386.210, RSMo, are repealed
10 and fourteen new sections enacted in lieu thereof, to be known as
11 sections 386.120, 386.135, 386.210, 386.374, 386.900, 393.156,
12 393.158, 393.1000, 393.1003, 393.1006, 393.1009, 393.1012,
13 393.1015, and 393.1018, to read as follows:

14 386.120. 1. The principal office of the commission shall
15 be at the state capital at the city of Jefferson City. The
16 commissioners shall reside within [a forty-mile radius of the
17 city of Jefferson City] the state of Missouri during their
18 respective terms of office. The office required by this
19 subsection shall be provided and assigned by the board of public
20 buildings.

1 2. The commission shall at all times, except Saturdays,
2 Sundays and legal holidays, be open and in session for the
3 transaction of business and the commissioners shall devote their
4 entire time to the duties of their office.

5 3. The commission shall have an official seal bearing the
6 following inscription: "Public Service Commission of the State
7 of Missouri". The seal shall be affixed to all writs and
8 authentications of copies of records and to such other
9 instruments as the commission shall direct. All courts shall
10 take judicial notice of such seal.

11 4. The commission may sue and be sued in its official name.
12 The offices of said commission shall be supplied with all
13 necessary books, maps, charts, stationery, office furniture,
14 telephone and telegraph connections, and all other necessary
15 appliances and incidentals, to be paid for in the same manner as
16 other expenses authorized by this chapter.

17 5. The offices of the commission shall be open during
18 business hours on all days except Saturdays, Sundays and legal
19 holidays, and one or more responsible persons, designated by the
20 commission or by the secretary, under the direction of the
21 commission, shall be on duty at all times, in immediate charge
22 thereof.

23 6. Any summons or other writ issued by any court of this
24 state or of the federal government shall be served upon the
25 secretary of the commission or on any commissioner at the

1 principal office of the commission in Jefferson City. Service of
2 any summons or other writ upon the secretary of the commission,
3 or upon any single commissioner, shall constitute service upon
4 the entire commission.

5 386.135. 1. The commission shall have an independent
6 technical advisory staff of six full time employees. The
7 advisory staff shall have expertise in accounting, economics,
8 finance, engineering or utility operations, law, and public
9 policy.

10 2. In addition, each commissioner shall also have the
11 authority to retain one personal advisor, who shall be deemed a
12 member of the technical advisory staff. The personal advisors
13 will serve at the pleasure of the individual commissioner whom
14 they serve and shall possess expertise in one or more of the
15 following fields: accounting, economics, finance, engineering or
16 utility operations, law, and public policy.

17 3. The commission may only hire technical advisory staff
18 pursuant to subsections 1 and 2 if there is a corresponding
19 elimination in comparable staff positions for commission staff to
20 offset the hiring of such technical advisory staff on a cost
21 neutral basis. Such technical advisory staff shall be hired on
22 or before July 1, 2004.

23 4. It shall be the duty of the technical advisory staff to
24 render advice and assistance to the commissioners and the
25 commission's hearing officers on technical matters within their

1 respective areas of expertise that may arise during the course of
2 proceedings before the commission.

3 5. The technical advisory staff shall also update the
4 commission and the commission's hearing officers periodically on
5 developments and trends in public utility regulation, including
6 updates comparing the use, nature, and effect of various
7 regulatory practices and procedures as employed by the commission
8 and public utility commissions in other jurisdictions.

9 6. Each member of the technical advisory staff shall be
10 subject to any applicable ex parte or conflict of interest
11 requirements in the same manner and to the same degree as any
12 commissioner, provided that neither any person regulated by,
13 appearing before, or employed by the commission shall be
14 permitted to offer such member a different appointment or
15 position during that member's tenure on the technical advisory
16 staff.

17 7. No employee of a company or corporation regulated by the
18 public service commission, no employee of the office of public
19 counsel or the public counsel, and no staff members of either the
20 utility operations division or utility services division, who,
21 were employees or staff members on, during the two years
22 immediately preceding, or anytime after August 28, 2003, may be a
23 member of the commission's technical advisory staff for two years
24 following the termination of their employment with the
25 corporation, office of public counsel, or commission staff

1 member.

2 8. The technical advisory staff shall never be a party to
3 any case before the commission.

4 386.210. 1. The commission may confer in person, or by
5 correspondence, by attending conventions, or in any other way,
6 with the members of the public, any public utility or similar
7 commission of this and other states and the United States of
8 America, or any official, agency or instrumentality thereof, on
9 any matter relating to the performance of its duties.

10 2. Such communications may address any issue that at the
11 time of such communication is not the subject of a case that has
12 been filed with the commission.

13 3. Such communications may also address substantive or
14 procedural matters that are the subject of a pending filing or
15 case in which no evidentiary hearing has been scheduled, provided
16 that the communication:

17 (1) Is made at a public agenda meeting of the commission
18 where such matter has been posted in advance as an item for
19 discussion or decision;

20 (2) Is made at a forum where representatives of the public
21 utility affected thereby, the office of public counsel, and any
22 other party to the case are present; or

23 (3) If made outside such agenda meeting or forum, is
24 subsequently disclosed to the public utility, the office of the
25 public counsel, and any other party to the case in accordance

1 with the following procedure:

2 (a) If the communication is written, the person or party
3 making the communication shall no later than the next business
4 day following the communication, file a copy of the written
5 communication in the official case file of the pending filing or
6 case and serve it upon all parties of record;

7 (b) If the communication is oral, the party making the oral
8 communication shall, no later than the next business day
9 following the communication, file a memorandum in the official
10 case file of the pending case disclosing the communication and
11 serve such memorandum on all parties of record. The memorandum
12 shall contain a summary of the substance of the communication and
13 not merely a listing of the subjects covered.

14 4. Nothing in this section or any other provision of law
15 shall be construed as imposing any limitation on the free
16 exchange of ideas, views, and information between any person and
17 the commission or any commissioner, provided that such
18 communications relate to matters of general regulatory policy and
19 do not address the merits of the specific facts, evidence,
20 claims, or positions presented or taken in a pending case unless
21 such communications comply with the provisions of subsection 3 of
22 this section.

23 5. The commission and any commissioner may also advise any
24 member of the general assembly or other governmental official of
25 the issues or factual allegations that are the subject of a

1 pending case, provided that the commission or commissioner does
2 not express an opinion as to the merits of such issues or
3 allegations, and may discuss in a public agenda meeting with
4 parties to a case in which an evidentiary hearing has been
5 scheduled, any procedural matter in such case or any matter
6 relating to a unanimous stipulation or agreement resolving all of
7 the issues in such case.

8 [2.] 6. The commission may enter into and establish fair
9 and equitable cooperative agreements or contracts with or act as
10 an agent or licensee for the United States of America, or any
11 official, agency or instrumentality thereof, or any public
12 utility or similar commission of other states, that are proper,
13 expedient, fair, and equitable and in the interest of the state
14 of Missouri and the citizens thereof, for the purpose of carrying
15 out its duties [under] pursuant to section 386.250 as limited and
16 supplemented by section 386.030 and to that end the commission
17 may receive and disburse any contributions, grants or other
18 financial assistance as a result of or pursuant to such
19 agreements or contracts. Any contributions, grants or other
20 financial assistance so received shall be deposited in the public
21 service commission utility fund or the state highway commission
22 fund depending upon the purposes for which they are received.

23 [3.] 7. The commission may make joint investigations, hold
24 joint hearings within or without the state, and issue joint or
25 concurrent orders in conjunction or concurrence with any

1 railroad, public utility or similar commission, of other states
2 or the United States of America, or any official, agency or any
3 instrumentality thereof, except that in the holding of such
4 investigations or hearings, or in the making of such orders, the
5 commission shall function under agreements or contracts between
6 states or under the concurrent power of states to regulate
7 interstate commerce, or as an agent of the United States of
8 America, or any official, agency or instrumentality thereof, or
9 otherwise.

10 386.374. Notwithstanding any other provisions of this
11 chapter or any law to the contrary, the public service commission
12 may approve, upon the terms and conditions in an application,
13 tariff or settlement agreement proposed or recommended by an
14 electric or gas corporation, programs for assisting low-income
15 residential ratepayers in obtaining or maintaining access to
16 reliable, continuous utility service to such low-income utility
17 customers. The commission may also approve energy efficiency,
18 weatherization, and evaluation components as part of such
19 programs. All programs, tariffs, agreements, or rule provisions
20 that provide for such assistance shall include terms for
21 adjusting rates as necessary to ensure that the program, tariff,
22 agreement, or rule provision will not have any negative financial
23 impact on the electric or gas corporation. Nothing in this
24 section shall be construed as diminishing the commission's
25 existing authority to approve on an experimental basis low-income

1 assistance programs proposed by an electric or gas corporation.

2 386.900. 1. Any person or other entity that has or
3 acquires a legal or equitable interest of five percent ownership
4 or greater of both:

5 (1) A public utility subject to regulation by the
6 commission; and

7 (2) Any corporation or other entity that supplies products,
8 including but not limited to energy, gas, electricity, coal, and
9 nuclear fuel, or services to such public utility of more than one
10 million dollars per year;

11 shall give notice, in writing, to the commission within thirty
12 days of acquiring such a double interest. Any individual or
13 entity holding such an interest as of August 28, 2003, shall
14 provide notice to the commission pursuant to this section within
15 thirty days of August 28, 2003.

16 2. Violation of subsection 1 of this section shall be a
17 class A misdemeanor. In the event that the commission or any
18 other agency of this state becomes aware of a violation of
19 subsection 1 of this section, such violation shall immediately be
20 reported to the attorney general for prosecution.

21 393.156. 1. As used in this section, the following terms
22 mean:

23 (1) "Company", an electrical corporation or a gas
24 corporation;

1 (2) "Contract", a company's contract for the purchase of
2 electrical power and energy in the amount of five million dollars
3 or more;

4 (3) "Cost", the total actual installed cost of a facility,
5 including allowance for funds used during construction, found by
6 the commission to be prudent and used and useful in the provision
7 of retail service to customers or the cost of a contract found by
8 the commission to be prudent;

9 (4) "Facility", any electric plant or gas plant with an
10 estimated total investment or leased cost of five million dollars
11 or more for companies serving one hundred thousand to one million
12 customers in this state, and twenty-five million dollars or more
13 for those companies serving more than one million customers in
14 this state;

15 (5) "In-service date", the date upon which the facility
16 meets commission approved in-service criteria consistent with
17 section 393.135;

18 (6) "In-service criteria", those operation and performance
19 criteria utilized by the commission, consistent with section
20 393.135, to determine that the facility will be fully operational
21 and used for service;

22 (7) "Ratemaking principles", may include authorized return
23 on common equity, minimum equity levels and maximum long term
24 debt levels to finance the facility, estimated service life
25 except that gas-fired generation built after January 2003, shall

1 have twenty year service life and coal-fired generation built
2 after January 2003, shall have thirty-five year service life,
3 depreciation rate for cost of service purposes except that gas-
4 fired generation built after January 2003, shall have a
5 depreciation rate of five percent and coal-fired generation built
6 after January 2003, shall have a depreciation rate of two and
7 eighty-sixth hundredths percent, jurisdictional allocation method
8 to be applied to the facility cost and facility in-service
9 criteria;

10 (8) "Stake", a company's whole or fractional ownership
11 share or leasehold, or other proprietary interest in a facility.

12 2. Prior to undertaking the construction of, or
13 participation in, a facility or prior to entering into a
14 contract, a company may file with the commission an application
15 requesting a determination of the ratemaking principles that will
16 apply to the cost to be incurred by the company to acquire its
17 stake in the facility during the expected useful life of the
18 facility, or to the cost of the contract during the term thereof.

19 3. Prepared direct testimony and exhibits supporting the
20 company's application shall be filed at the same time as the
21 application. A minimum of two copies of said documents shall be
22 served on the office of the public counsel on the same date. If
23 the facility is not to be located within the state of Missouri or
24 the contract is not with an entity owning generation facilities
25 within the state of Missouri, the company shall establish that

1 the location for the facility or the contract is in the best
2 interest of Missouri ratepayers.

3 4. Public notice and intervention shall be allowed.

4 5. The commission shall thereafter issue an order setting
5 forth the ratemaking principles that will be applicable to the
6 cost of the company's stake in the facility or to the cost of the
7 contract in all ratemaking proceedings before the commission on
8 and after such time as the facility is fully operational and used
9 for service or the effective date of the contract. The
10 ratemaking principles applicable to the cost of the facility or
11 cost of the contract shall be utilized by the commission in all
12 proceedings before it in which the cost of the company's stake in
13 the facility or the cost of the contract is considered. If the
14 commission fails to issue a determination within one hundred
15 eighty days of the date an application for a determination of
16 ratemaking principles is filed, the ratemaking principles
17 proposed by the company in its application will be deemed to have
18 been approved by the commission and shall be binding for
19 ratemaking purposes during the useful life of the facility or
20 during the term of the contract. An application pursuant to this
21 section may, at the option of the company, be joined with and
22 made a part of an application for a certificate of convenience
23 and necessity under section 393.170, if necessary, in which case
24 the application for a certificate of convenience and necessity
25 will be deemed to have been approved by the commission if not

1 otherwise decided within one hundred eighty days after the
2 application is filed.

3 6. The company shall have twelve months from the effective
4 date of the determination to notify the commission whether it
5 will construct, or participate in the construction of, the
6 facility or whether it will enter into the contract. If the
7 company notifies the commission within the twelve-month period
8 that the company will not construct, or participate in the
9 construction of, the facility or that it will not enter into the
10 contract, then the determination of ratemaking principles
11 pursuant to subsection 5 of this section shall be of no further
12 force or effect, and shall have no precedential value in any
13 subsequent proceeding before the commission, and there shall be
14 no adverse presumption applied to the company in any future
15 proceeding before the commission as a result of such
16 notification.

17 7. Nothing herein shall excuse a company from complying
18 with its public service obligation to provide safe and adequate
19 service at just and reasonable rates.

20 393.158. 1. As used in this section, the following terms
21 mean:

22 (1) "Base cost", the average cost of fuel and purchased
23 power energy costs per kilowatt hour included in base rates at
24 the time of the last general retail rate proceeding;

25 (2) "Commission", the Missouri public service commission;

1 (3) "Correction amount", the dollar cost, positive or
2 negative, needed to adjust the second prior month's energy cost
3 estimate to the actual cost incurred during the second prior
4 month. The correction amount shall be calculated as follows:
5 the sum of the actual cost of fuel burned during the correction
6 month, the actual cost of purchased power incurred during the
7 correction month, the actual net cost of interchange during the
8 correction month, and the correction amount used originally in
9 the correction month; minus the sum of the estimated cost of fuel
10 burned during the correction month, estimated cost of purchased
11 power during the correction month, the estimated net cost of
12 interchange during the correction month and the correction amount
13 used originally in energy cost adjustment clause calculation for
14 the second prior month. The net result is multiplied by the
15 ratio of actual kilowatt hour sales in the correction month over
16 the estimated kilowatt hour sales in the correction month;

17 (4) "FERC", the Federal Energy Regulatory Commission;

18 (5) "Fuel", the amount paid by an electrical corporation
19 for natural gas, oil, or coal, including the transportation
20 thereof, used by said corporation or another entity to generate
21 for or to supply electrical energy to said corporation;

22 (6) "Net interchange", the net dollar cost, positive or
23 negative, of interchange received less interchange sales;

24 (7) "Purchased power", the amount paid by an electrical
25 corporation for electrical energy, including the transmission

1 thereof, generated by another entity, but used by said electrical
2 corporation, and the delivered cost of natural gas burned in
3 tolling purchased power contracts;

4 (8) "Sales", the estimated kilowatt hours delivered to
5 customers during the current month, which equals the sum of the
6 estimated kilowatt hours generated, purchased and net
7 interchanged during the month multiplied by one minus the line
8 loss percentage.

9 2. Notwithstanding any other provision of the law to the
10 contrary, any electrical corporation, as defined in section
11 386.020, RSMo, shall be allowed to recover all of its reasonably
12 and prudently incurred costs for fuel and all of its reasonably
13 and prudently incurred costs for purchased electrical energy for
14 its retail customers through energy adjustment rate schedules
15 designed to specifically recover such costs. The energy
16 adjustment rate schedules to recover these costs shall be filed
17 with the commission, and may, at the option of the electrical
18 corporation, be established and implemented either within or
19 without the context of a general rate increase request
20 proceeding. However, in the event the electrical corporation
21 seeks to establish and implement energy adjustment rate schedules
22 outside the context of a general rate increase proceeding, the
23 commission shall determine the level of fuel costs contained in
24 the electrical corporation's existing filed and approved base
25 rates based on detailed records, work papers, calculations, or

1 other information and materials provided to the commission.

2 3. The commission shall allow the modification of the
3 energy adjustment rate schedules authorized by this section to
4 take place on a timely basis to reflect increases or decreases in
5 fuel costs and purchased energy costs above or below the costs of
6 said items reflected in the permanent base rates of the
7 electrical corporation on file with and approved by the
8 commission. Changes in such energy adjustment rate schedules may
9 be made as frequently as every thirty days. In exercising its
10 authority pursuant to this section, the commission shall consider
11 only whether the calculations of said fuel costs and purchased
12 energy costs by the electrical corporation are accurate and
13 reflect the costs being incurred or reasonably expected to be
14 incurred by the electrical corporation and the commission shall
15 not, at the same time, consider other factors which may affect
16 the other costs or the overall rates or other charges of such
17 electrical corporation.

18 4. In connection with implementing the energy adjustment
19 rate schedules authorized pursuant to this section, the
20 commission shall establish a "true-up" procedure similar to the
21 procedure that the commission utilizes for purchased gas cost
22 recovery for gas corporations. The "true-up" procedure shall
23 accurately and appropriately remedy any over or under collections
24 of the involved costs from previous periods, including any over
25 or under collection of the fuel costs and electrical energy costs

1 embedded in the corporation's rates that were not reflected in
2 the commission's initial determination of these costs pursuant to
3 subsection 9 of this section with customer credits or refunds
4 including interest payable at the electrical corporation's short-
5 term debt rate. The "true-up" procedure shall also be used to
6 evaluate whether, and to what extent, the involved costs were
7 prudently incurred and to make any rate adjustments necessary to
8 exclude costs that were not prudently incurred to the financial
9 detriment of the electric corporation's customers.

10 5. Fuel costs recoverable pursuant to this section shall
11 include only those costs properly recorded as fuel costs,
12 including pipeline delivery charges, prior to or in the burning
13 cycle in FERC Account Numbers 501, 547, or 555, except that said
14 costs shall be reduced by the amount of supplier or pipeline
15 refunds normally credited to said accounts. Purchased electrical
16 energy costs recoverable pursuant to this section shall include
17 those properly recorded as purchased energy costs, including
18 related transmission charges incurred for delivery of the
19 purchased energy, in FERC Account Numbers 555 or 565, exclusive
20 of capacity, demand or other fixed charges.

21 6. Each electrical corporation, which has on file with the
22 commission approved energy adjustment rate schedules pursuant to
23 this section, shall submit to the commission on or before the
24 fifteenth day of each month an energy adjustment report, in a
25 format prescribed by the commission, showing the calculations for

1 the next month's energy adjustment rate.

2 7. The energy adjustment rates authorized by this section
3 when modified shall be increased or decreased by one-tenth of one
4 cent per kilowatt hour for each one-tenth of one cent, or major
5 fraction thereof, increase or decrease in the aggregate cost of
6 energy per kilowatt hour computed by the following formula: The
7 sum of the estimated cost of fuel burned during the current
8 month, the estimated total cost of purchased power incurred
9 during the current month, the estimated net cost of interchange
10 incurred during the current month, and the correction amount
11 divided by estimated sales during the current month, minus the
12 base cost of energy.

13 8. Each energy adjustment rate schedule filing made
14 pursuant to this section shall include detailed records, work
15 papers, and calculations sufficient for the commission to
16 determine whether to establish, continue, reduce, or increase the
17 level of the energy adjustment rate. Copies of all such filings
18 shall be provided on the same calendar day to the office of the
19 public counsel.

20 9. Energy adjustment rate schedule filings pursuant to this
21 section shall be designed to become effective thirty days after
22 filing and not be subject to suspension by the commission. Any
23 such filing shall be considered on an expedited basis and a
24 decision, including an initial determination, if necessary, of
25 the fuel costs and purchased electrical energy costs embedded in

1 the corporation's base rates, shall be made by the commission
2 within thirty days of the filing. Interested parties may
3 intervene in any such proceedings, but any such intervention
4 shall not extend the thirty-day period for making a decision.
5 The energy adjustment rate schedules shall become effective the
6 date of said commission decision or thirty days after filing,
7 whichever first occurs, but shall be subject to the "true-up"
8 mechanism described in subsection 4 of this section.

9 10. Nothing in this section shall allow an electrical
10 corporation to avoid any rate freeze conditions or other
11 commitments made in connection with settlements of any prior
12 general rate proceeding.

13 11. Nothing in this section shall be construed as limiting
14 the authority of the commission to review and consider fuel
15 costs, purchased electrical energy costs, or any other fuel or
16 fuel-related costs along with other costs during any general rate
17 proceeding of any electrical corporation.

18 12. Nothing in this section shall be construed as limiting
19 the authority of the commission to continue the practice of using
20 the purchased gas adjustment clause mechanism for the recovery of
21 natural gas commodity, transportation, storage, and related costs
22 for gas corporations whereby changes in such costs are recognized
23 in rates without the filing of a general rate proceeding.

24 393.1000. As used in sections 393.1000 to 393.1006, the
25 following terms mean:

1 (1) "Appropriate pretax revenues", the revenues necessary
2 to produce net operating income equal to:

3 (a) The water corporation's weighted cost of capital
4 multiplied by the net original cost of eligible infrastructure
5 system replacements, including recognition of accumulated
6 depreciation and deferred income taxes associated with eligible
7 infrastructure system replacements which are included in a
8 currently effective ISRS; and

9 (b) Recover state, federal, and local income or excise
10 taxes applicable to such income; and

11 (c) Recover all other ISRS costs;

12 (2) "Commission", the Missouri public service commission;

13 (3) "Eligible infrastructure system replacements", water
14 utility plant projects that:

15 (a) Replace or extend the useful life of existing
16 infrastructure;

17 (b) Are in service and used and useful;

18 (c) Do not increase revenues by directly connecting the
19 infrastructure replacement to new customers; and

20 (d) Were not included in the water corporation's rate base
21 in its most recent general rate case;

22 (4) "ISRS", infrastructure system replacement surcharge;

23 (5) "ISRS costs", depreciation expenses, and property taxes
24 that will be due within twelve months of the ISRS filing;

25 (6) "ISRS revenues", revenues produced through an ISRS,

1 exclusive of revenues from all other rates and charges;

2 (7) "Water corporation", every corporation, company,
3 association, joint stock company or association, partnership, and
4 person, their lessees, trustees, or receivers appointed by any
5 court whatsoever, owning, operating, controlling, or managing any
6 plant or property, dam or water supply, canal, or power station,
7 distributing or selling for distribution, or selling or supplying
8 for gain any water to more than ten thousand customers;

9 (8) "Water utility plant projects", may consist only of the
10 following:

11 (a) Mains, and associated valves and hydrants, installed as
12 replacements for existing facilities that have worn out or are in
13 deteriorated condition;

14 (b) Main cleaning and relining projects; and

15 (c) Facilities relocations required due to construction or
16 improvement of a highway, road, street, public way, or other
17 public work by or on behalf of the United States, this state, a
18 political subdivision of this state, or another entity having the
19 power of eminent domain provided that the costs related to such
20 projects have not been reimbursed to the water corporation.

21 393.1003. 1. Notwithstanding any provisions of chapter
22 386, RSMo, and this chapter to the contrary, as of August 28,
23 2003, a water corporation providing water service may file a
24 petition and proposed rate schedules with the commission to
25 establish or change ISRS rate schedules that will allow for the

1 adjustment of the water corporation's rates and charges to
2 provide for the recovery of costs for eligible infrastructure
3 system replacements; provided that an ISRS, on an annualized
4 basis, shall produce ISRS revenues of at least one million
5 dollars but not in excess of ten percent of the water
6 corporation's base revenue level approved by the commission in
7 the water corporation's most recent general rate proceeding. An
8 ISRS and any future changes thereto shall be calculated and
9 implemented in accordance with the provisions of sections
10 393.1000 to 393.1006. ISRS revenues shall be subject to refund
11 based upon a finding and order of the commission, to the extent
12 provided in subsections 5 and 8 of section 393.1006.

13 2. The commission shall not approve an ISRS for a water
14 corporation that has not had a general rate proceeding decided or
15 dismissed by issuance of a commission order within the past three
16 years, unless the water corporation has filed for or is the
17 subject of a new general rate proceeding.

18 3. In no event shall a water corporation collect an ISRS
19 for a period exceeding three years unless the water corporation
20 has filed for or is the subject of a new general rate proceeding;
21 provided that the ISRS may be collected until the effective date
22 of new rate schedules established as a result of the new general
23 rate proceeding, or until the subject general rate proceeding is
24 otherwise decided or dismissed by issuance of a commission order
25 without new rates being established.

1 393.1006. 1. (1) At the time that a water corporation
2 files a petition with the commission seeking to establish or
3 change an ISRS, it shall submit proposed ISRS rate schedules and
4 its supporting documentation regarding the calculation of the
5 proposed ISRS with the petition, and shall serve the office of
6 the public counsel with a copy of its petition, its proposed rate
7 schedules and its supporting documentation.

8 (2) Upon the filing of a petition, and any associated rate
9 schedules, seeking to establish or change an ISRS, the commission
10 shall publish notice of the filing.

11 2. (1) When a petition, along with any associated proposed
12 rate schedules, is filed pursuant to the provisions of sections
13 393.1000 to 393.1006, the commission shall conduct an examination
14 of the proposed ISRS.

15 (2) The staff of the commission may examine information of
16 the water corporation to confirm that the underlying costs are in
17 accordance with the provisions of sections 393.1000 to 393.1006,
18 and to confirm proper calculation of the proposed charge, and may
19 submit a report regarding its examination to the commission not
20 later than sixty days after the petition is filed. No other
21 revenue requirement or ratemaking issues shall be examined in
22 consideration of the petition or associated proposed rate
23 schedules filed pursuant to the provisions of sections 393.1000
24 to 393.1006.

25 (3) The commission may hold a hearing on the petition and

1 any associated rate schedules and shall issue an order to become
2 effective not later than one hundred twenty days after the
3 petition is filed.

4 (4) If the commission finds that a petition complies with
5 the requirements of sections 393.1000 to 393.1006, the commission
6 shall enter an order authorizing the water corporation to impose
7 an ISRS that is sufficient to recover appropriate pretax
8 revenues, as determined by the commission pursuant to the
9 provisions of sections 393.1000 to 393.1006.

10 3. A water corporation may effectuate a change in its rate
11 pursuant to this section no more often than two times every
12 twelve months.

13 4. In determining the appropriate pretax revenues, the
14 commission shall consider only the following factors:

15 (1) The current state, federal, and local income or excise
16 tax rates;

17 (2) The water corporation's actual regulatory capital
18 structure as determined during the most recent general rate
19 proceeding of the water corporation;

20 (3) The actual cost rates for the water corporation's debt
21 and preferred stock as determined during the most recent general
22 rate proceeding of the water corporation;

23 (4) The water corporation's cost of common equity as
24 determined during the most recent general rate proceeding of the
25 water corporation;

1 (5) The current property tax rate or rates applicable to
2 the eligible infrastructure system replacements;

3 (6) The current depreciation rates applicable to the
4 eligible infrastructure system replacements;

5 (7) In the event information called for in subdivisions
6 (2), (3), and (4) is unavailable and the commission is not
7 provided with such information on an agreed-upon basis, the
8 commission shall refer to the testimony submitted during the most
9 recent general rate proceeding of the water corporation and use,
10 in lieu of any such unavailable information, the recommended
11 capital structure, recommended cost rates for debt and preferred
12 stock, and recommended cost of common equity that would produce
13 the average weighted cost of capital based upon the various
14 recommendations contained in such testimony.

15 5. (1) An ISRS shall be calculated based upon the amount
16 of ISRS costs that are eligible for recovery during the period in
17 which the surcharge will be in effect and upon the applicable
18 customer class billing determinants utilized in designing the
19 water corporation's customer rates in its most recent general
20 rate proceeding. The commission shall, however, only allow such
21 surcharges to apply to classes of customers receiving a benefit
22 from the subject water utility plant projects or shall prorate
23 the surcharge according to the benefit received by each class of
24 customers; provided that the ISRS shall be applied in a manner
25 consistent with the customer class cost-of-service study

1 recognized by the commission in the water corporation's most
2 recent general rate proceeding, if applicable, and with the rate
3 design methodology utilized to develop the water corporation's
4 rates resulting from its most recent general rate proceeding.

5 (2) At the end of each twelve-month calendar period that an
6 ISRS is in effect, the water corporation shall reconcile the
7 differences between the revenues resulting from an ISRS and the
8 appropriate pretax revenues as found by the commission for that
9 period and shall submit the reconciliation and a proposed ISRS
10 adjustment to the commission for approval to recover or refund
11 the difference, as appropriate, through adjustment of an ISRS.

12 6. (1) A water corporation that has implemented an ISRS
13 pursuant to the provisions of sections 393.1000 to 393.1006 shall
14 file revised rate schedules to reset the ISRS to zero when new
15 base rates and charges become effective for the water corporation
16 following a commission order establishing customer rates in a
17 general rate proceeding that incorporates in the utility's base
18 rates eligible costs previously reflected in an ISRS.

19 (2) Upon the inclusion in a water corporation's base rates
20 of eligible costs previously reflected in an ISRS, the water
21 corporation shall immediately thereafter reconcile any previously
22 unreconciled ISRS revenues as necessary to ensure that revenues
23 resulting from the ISRS match as closely as possible the
24 appropriate pretax revenues as found by the commission for that
25 period.

1 7. A water corporation's filing of a petition to establish
2 or change an ISRS pursuant to the provisions of sections 393.1000
3 to 393.1006 shall not be considered a request for a general
4 increase in the water corporation's base rates and charges.

5 8. Commission approval of a petition, and any associated
6 rate schedules, to establish or change an ISRS pursuant to the
7 provisions of sections 393.1000 to 393.1006 shall in no way be
8 binding upon the commission in determining the ratemaking
9 treatment to be applied to eligible infrastructure system
10 replacements during a subsequent general rate proceeding when the
11 commission may undertake to review the prudence of such costs.
12 In the event the commission disallows, during a subsequent
13 general rate proceeding, recovery of costs associated with
14 eligible infrastructure system replacements previously included
15 in an ISRS, the water corporation shall offset its ISRS in the
16 future as necessary to recognize and account for any such
17 overcollections.

18 9. Nothing contained in sections 393.1000 to 393.1006 shall
19 be construed to impair in any way the authority of the commission
20 to review the reasonableness of the rates or charges of a water
21 corporation, including review of the prudence of eligible
22 infrastructure system replacements made by a water corporation,
23 pursuant to the provisions of section 386.390, RSMo.

24 10. The commission shall have authority to promulgate rules
25 for the implementation of sections 393.1000 to 393.1006, but only

1 to the extent such rules are consistent with, and do not delay
2 the implementation of, the provisions of sections 393.1000 to
3 393.1006. No rule or portion of a rule promulgated pursuant to
4 the authority of this section shall become effective unless it
5 has been promulgated pursuant to chapter 536, RSMo.

6 393.1009. As used in sections 393.1009 to 393.1015, the
7 following terms mean:

8 (1) "Appropriate pretax revenues", the revenues necessary
9 to produce net operating income equal to:

10 (a) The gas corporation's weighted cost of capital
11 multiplied by the net original cost of eligible infrastructure
12 system replacements, including recognition of accumulated
13 depreciation and deferred income taxes associated with eligible
14 infrastructure system replacements which are included in a
15 currently effective ISRS; and

16 (b) Recover state, federal, and local income or excise
17 taxes applicable to such income; and

18 (c) Recover all other ISRS costs;

19 (2) "Commission", the Missouri public service commission;

20 (3) "Eligible infrastructure system replacements", gas
21 utility plant projects that:

22 (a) Do not increase revenues by directly connecting the
23 infrastructure replacement to new customers;

24 (b) Are in service and used and useful;

25 (c) Were not included in the gas corporation's rate base in

1 its most recent general rate case; and

2 (d) Replace, or extend the useful life of an existing
3 infrastructure;

4 (4) "Gas corporation", every corporation, company,
5 association, joint stock company or association, partnership and
6 person, their lessees, trustees or receivers appointed by any
7 court whatsoever, owning, operating, controlling, or managing any
8 gas plant operating for public use under privilege, license, or
9 franchise now or hereafter granted by the state or any political
10 subdivision, county, or municipality thereof as defined in
11 section 386.020, RSMo;

12 (5) "Gas utility plant projects", may consist only of the
13 following:

14 (a) Mains, valves, service lines, regulator stations,
15 vaults, and other pipeline system components installed to comply
16 with state or federal safety requirements as replacements for
17 existing facilities that have worn out or are in deteriorated
18 condition;

19 (b) Main relining projects, service line insertion
20 projects, joint encapsulation projects, and other similar
21 projects extending the useful life, or enhancing the integrity of
22 pipeline system components undertaken to comply with state or
23 federal safety requirements; and

24 (c) Facilities relocations required due to construction or
25 improvement of a highway, road, street, public way, or other

1 public work by or on behalf of the United States, this state, a
2 political subdivision of this state, or another entity having the
3 power of eminent domain provided that the costs related to such
4 projects have not been reimbursed to the gas corporation;

5 (6) "ISRS", infrastructure system replacement surcharge;

6 (7) "ISRS costs", depreciation expense and property taxes
7 that will be due within twelve months of the ISRS filing;

8 (8) "ISRS revenues", revenues produced through an ISRS
9 exclusive of revenues from all other rates and charges.

10 393.1012. 1. Notwithstanding any provisions of chapter
11 386, RSMo, and this chapter to the contrary, beginning August 28,
12 2003, a gas corporation providing gas service may file a petition
13 and proposed rate schedules with the commission to establish or
14 change ISRS rate schedules that will allow for the adjustment of
15 the gas corporation's rates and charges to provide for the
16 recovery of costs for eligible infrastructure system
17 replacements. The commission may not approve an ISRS to the
18 extent it would produce total annualized ISRS revenues exceeding
19 ten percent of the gas corporation's base revenue level approved
20 by the commission in the gas corporation's most recent general
21 rate proceeding. An ISRS and any future changes thereto shall be
22 calculated and implemented in accordance with the provisions of
23 sections 393.1009 to 393.1015. ISRS revenues shall be subject to
24 a refund based upon a finding and order of the commission to the
25 extent provided in subsections 5 and 8 of section 393.1009.

1 2. The commission shall not approve an ISRS for any gas
2 corporation that has not had a general rate proceeding decided or
3 dismissed by issuance of a commission order within the past three
4 years, unless the gas corporation has filed for or is the subject
5 of a new general rate proceeding.

6 3. In no event shall a gas corporation collect an ISRS for
7 a period exceeding three years unless the gas corporation has
8 filed for or is the subject of a new general rate proceeding;
9 provided that the ISRS may be collected until the effective date
10 of new rate schedules established as a result of the new general
11 rate proceeding, or until the subject general rate proceeding is
12 otherwise decided or dismissed by issuance of a commission order
13 without new rates being established.

14 393.1015. 1. (1) At the time that a gas corporation files
15 a petition with the commission seeking to establish or change an
16 ISRS, it shall submit proposed ISRS rate schedules and its
17 supporting documentation regarding the calculation of the
18 proposed ISRS with the petition, and shall serve the office of
19 the public counsel with a copy of its petition, its proposed rate
20 schedules, and its supporting documentation.

21 (2) Upon the filing of a petition, and any associated rate
22 schedules, seeking to establish or change an ISRS, the commission
23 shall publish notice of the filing.

24 2. (1) When a petition, along with any associated proposed
25 rate schedules, is filed pursuant to the provisions of sections

1 393.1009 to 393.1015, the commission shall conduct an examination
2 of the proposed ISRS.

3 (2) The staff of the commission may examine information of
4 the gas corporation to confirm that the underlying costs are in
5 accordance with the provisions of sections 393.1009 to 393.1015,
6 and to confirm proper calculation of the proposed charge, and may
7 submit a report regarding its examination to the commission not
8 later than sixty days after the petition is filed. No other
9 revenue requirement or ratemaking issues may be examined in
10 consideration of the petition or associated proposed rate
11 schedules filed pursuant to the provisions of sections 393.1009
12 to 393.1015.

13 (3) The commission may hold a hearing on the petition and
14 any associated rate schedules and shall issue an order to become
15 effective not later than one hundred twenty days after the
16 petition is filed.

17 (4) If the commission finds that a petition complies with
18 the requirements of sections 393.1009 to 393.1015, the commission
19 shall enter an order authorizing the corporation to impose an
20 ISRS that is sufficient to recover appropriate pretax revenue, as
21 determined by the commission pursuant to the provisions of
22 sections 393.1009 to 393.1015.

23 3. A gas corporation may effectuate a change in its rate
24 pursuant to the provisions of this section no more often than two
25 times every twelve months.

1 4. In determining the appropriate pretax revenue, the
2 commission shall consider only the following factors:

3 (1) The current state, federal, and local income tax or
4 excise rates;

5 (2) The gas corporation's actual regulatory capital
6 structure as determined during the most recent general rate
7 proceeding of the gas corporation;

8 (3) The actual cost rates for the gas corporation's debt
9 and preferred stock as determined during the most recent general
10 rate proceeding of the gas corporation;

11 (4) The gas corporation's cost of common equity as
12 determined during the most recent general rate proceeding of the
13 gas corporation;

14 (5) The current property tax rate or rates applicable to
15 the eligible infrastructure system replacements;

16 (6) The current depreciation rates applicable to the
17 eligible infrastructure system replacements; and

18 (7) In the event information pursuant to subdivisions (2),
19 (3), and (4) of this subsection is unavailable and the commission
20 is not provided with such information on an agreed upon basis,
21 the commission shall refer to the testimony submitted during the
22 most recent general rate proceeding of the gas corporation and
23 use, in lieu of any such unavailable information, the recommended
24 capital structure, recommended cost rates for debt and preferred
25 stock, and recommended cost of common equity that would produce

1 the average weighted cost of capital based upon the various
2 recommendations contained in such testimony.

3 5. (1) The monthly ISRS charge may be calculated based on
4 a reasonable estimate of billing units in the period in which the
5 charge will be in effect, which shall be conclusively established
6 by dividing the appropriate pretax revenues by the customer
7 numbers reported by the gas corporation in the annual report it
8 most recently filed with the commission pursuant to subdivision
9 (6) of section 393.140, and then further dividing this quotient
10 by twelve. Provided, however, that the monthly ISRS may vary
11 according to customer class and may be calculated based on
12 customer numbers as determined during the most recent general
13 rate proceeding of the gas corporation so long as the monthly
14 ISRS for each customer class maintains a proportional
15 relationship equivalent to the proportional relationship of the
16 monthly customer charge for each customer class.

17 (2) At the end of each twelve month calendar period the
18 ISRS is in effect, the gas corporation shall reconcile the
19 differences between the revenues resulting from an ISRS and the
20 appropriate pretax revenues as found by the commission for that
21 period and shall submit the reconciliation and a proposed ISRS
22 adjustment to the commission for approval to recover or refund
23 the difference, as appropriate, through adjustments of an ISRS
24 charge.

25 6. (1) A gas corporation that has implemented an ISRS

1 pursuant to the provisions of sections 393.1009 to 393.1015 shall
2 file revised rate schedules to reset the ISRS to zero when new
3 base rates and charges become effective for the gas corporation
4 following a commission order establishing customer rates in a
5 general rate proceeding that incorporates in the utility's base
6 rates eligible costs previously reflected in an ISRS.

7 (2) Upon the inclusion in a gas corporation's base rates of
8 eligible costs previously reflected in an ISRS, the gas
9 corporation shall immediately thereafter reconcile any previously
10 unreconciled ISRS revenues as necessary to ensure that revenues
11 resulting from the ISRS match as closely as possible the
12 appropriate pretax revenues as found by the commission for that
13 period.

14 7. A gas corporation's filing of a petition to change an
15 ISRS pursuant to the provisions of sections 393.1009 to 393.1015
16 shall not be considered a request for a general increase in the
17 gas corporation's base rates and charges.

18 8. Commission approval of a petition, and any associated
19 rate schedules, to establish or change an ISRS pursuant to the
20 provisions of sections 393.1009 to 393.1015 shall in no way be
21 binding upon the commission in determining the ratemaking
22 treatment to be applied to eligible infrastructure system
23 replacements during a subsequent general rate proceeding when the
24 commission may undertake to review the prudence of such costs.
25 In the event the commission disallows, during a subsequent

1 general rate proceeding, recovery of costs associated with
2 eligible infrastructure system replacements previously included
3 in an ISRS, the gas corporation shall offset its ISRS in the
4 future as necessary to recognize and account for any such
5 overcollections.

6 9. Nothing contained in sections 393.1009 to 393.1015 shall
7 be construed to impair in any way the authority of the commission
8 to review the reasonableness of the rates or charges of a gas
9 corporation, including review of the prudence of eligible
10 infrastructure system replacements made by a gas corporation,
11 pursuant to the provisions of section 386.390, RSMo.

12 10. The commission shall have authority to promulgate rules
13 for the implementation of sections 393.1009 to 393.1015, but only
14 to the extent such rules are consistent with, and do not delay
15 the implementation of, the provisions of sections 393.1009 to
16 393.1015. No rule or portion of a rule promulgated pursuant to
17 the authority of this section shall become effective unless it
18 has been promulgated pursuant to chapter 536, RSMo.

19 393.1018. 1. The public service commission, upon
20 application, shall authorize an electric corporation, gas
21 corporation, or water corporation to recover the utility's
22 incremental costs of prudent expenditures for security measures
23 incurred after September 11, 2001, and reasonably required to
24 comply with requirements or guidelines of the United States
25 Department of Energy, the United States Environmental Protection

1 Agency, the Federal Bureau of Investigation, the United States
2 Department of Homeland Security, the Nuclear Regulatory
3 Commission, the Federal Energy Regulatory Commission, the North
4 American Reliability Council, the Office of Pipeline Safety
5 within the United States Department of Transportation, the state
6 office of homeland security, the state emergency management
7 agency, local emergency planning commissions, county offices of
8 emergency management, the department of natural resources, and
9 the state public service commission to protect the utility's
10 generation, distribution, transmission assets, and incremental
11 increases in costs for insuring such assets but only to the
12 extent such insurance cost increases are related to terrorist
13 activities of September 11, 2001, or similar terrorist threats or
14 activities occurring thereafter, by periodic adjustment to the
15 utility's customers bills. Recovery would include security
16 measures for computer systems used in the generation,
17 transmission, and distribution of utilities and other operations
18 and control systems. The application shall be subject to such
19 procedures and conditions, including review, in an expedited
20 manner, of the prudence of the expenditures and the
21 reasonableness of the measures, as the commission deems
22 appropriate. Upon filing a petition pursuant to this section,
23 the commission shall publish a notice of the filing. The
24 contents of such application and request shall be protected from
25 public disclosure as determined by the commission.

1 2. The public service commission, upon application, shall
2 authorize an electric corporation to recover unreimbursed costs
3 for capital projects for required relocation of company
4 facilities due to construction or improvement of a highway, road,
5 street, public way, or other public work by or on behalf of the
6 United States, this state, or any political subdivision of this
7 state, or any entity having the power of eminent domain by
8 periodic adjustment to the utility's customers bills. The
9 application shall be subject to such procedures and conditions,
10 including review, in an expedited manner, of the prudence of the
11 reasonableness of the expenditures and as the commission deems
12 appropriate.

13 3. The commission shall not approve cost recovery pursuant
14 to this section for any electric, gas, or water corporation that
15 has not had a general rate proceeding decided or dismissed by
16 issuance of a commission order within the past three years,
17 unless the electric, gas, or water corporation has filed for or
18 is the subject of a new general rate proceeding, or if the
19 electric, gas, or water corporation has been subject of an
20 earnings review with no further action taken.

21 4. In no event shall a utility recover costs pursuant to
22 this section for a period exceeding three years unless the
23 utility has filed for or is the subject of a new general rate
24 proceeding; provided that cost recovery may be collected until
25 the effective date of new rate schedules established as a result

1 of the new general rate proceeding, or until the subject general
2 rate proceeding is otherwise decided or dismissed by issuance of
3 a commission order without new rates being established. This
4 subsection shall not prevent the commission from approving an
5 agreement that a rate case filing is not necessary.

6 5. In no event shall the provisions of this section excuse
7 an electric, gas, or water corporation from honoring all rate
8 freeze conditions of settlements or other agreements or
9 commitments made by such corporations at hearings held for the
10 purpose of considering whether such settlements shall be
11 approved.

12 Section B. Because of the immediate need to allow
13 electrical corporations to timely recover unanticipated and
14 rapidly increasing natural gas costs and purchased electrical
15 energy costs, the enactment of section 393.158 of section A of
16 this act is deemed necessary for the immediate preservation of
17 the public health, welfare, peace and safety, and is hereby
18 declared an emergency act within the meaning of the constitution,
19 and the enactment of section 393.158 of section A of this act
20 shall be in full force and effect upon its passage and approval.